DESCRIPTION OF H.R. 7983, THE "STOP EXECUTIVE OVERREACH ON TRADE AGREEMENTS ACT OF 2024"

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on April 17, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

April 15, 2024
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CONTENTS

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for April 17, 2024, of H.R. 7983, the "Stop Executive Overreach on Trade Agreements Act of 2024." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 7983, the "Stop Executive Overreach on Trade Agreements Act of 2024"* (JCX-10-24), April 15, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the "Code"), unless otherwise stated.

A. Free Trade Agreement Defined for Purposes of Clean Vehicle Credit

Present Law

In general

Present law allows a credit for each new clean vehicle placed in service (the "CV credit"). A new clean vehicle is a motor vehicle the original use of which commences with the taxpayer, is acquired for use or lease and not for resale, is made by a qualified manufacturer,[2] has a gross vehicle weight rating of less than 14,000 pounds, is treated as a motor vehicle for purposes of title II of the Clean Air Act, and is propelled to a significant extent by an electric motor drawing electricity from a battery (1) with at least seven kilowatt-hours of capacity and (2) which is capable of being recharged from an external source of electricity.[3] The person who sells the vehicle must provide a report to the taxpayer and Secretary that includes the name and taxpayer identification number of the taxpayer, the vehicle identification number of the vehicle, the battery capacity of the vehicle, verification that original use of the vehicle commences with the taxpayer, and the maximum credit allowable to the taxpayer with respect to the vehicle.[4] A new clean vehicle must have final assembly occur within North America.[5]

New qualified fuel cell motor vehicles[6] which have final assembly within North America and for which sellers provide a report, as described above, are new clean vehicles for purposes of the credit.[7]

Vehicles with any applicable critical minerals in the battery that are extracted, processed, or recycled by a foreign entity of concern that are placed in service after December 31, 2024 or vehicles with any components contained in the battery of the vehicle that are manufactured or assembled by a foreign entity of concern that are placed in service after December 31, 2023 do not qualify for the credit.[8]

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[2] A qualified manufacturer must be a manufacturer as defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. sec. 7521 *et seq.*) and must provide periodic written reports to the Secretary which include vehicle identification numbers. Sec. 30D(d)(3).

[3] Sec. 30D(d)(1).

[4] Sec. 30D(d)(1)(H).

[5] Sec. 30D(d)(1)(G).

[6] As defined in section 30B(b)(3).

[7] Sec. 30D(d)(6).

[8] Sec. 30D(d)(7). Treasury and the U.S. Department of Energy have released proposed regulations on excluded entities for the clean vehicle credit and foreign entities of concern. See Notice of Proposed Rulemaking, 88 Fed. Reg. 84098, December 4, 2023, and Notice of Proposed Rulemaking, 88 Fed. Reg. 84082, December 4, 2023, respectively.

A foreign entity of concern[9] is a foreign entity that is (1) designated as a foreign terrorist organization by the Secretary of State, (2) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury ("SDN list"), (3) owned by, controlled by, or subject to the jurisdiction or direction of the government of a covered nation,[10] (4) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under certain laws,[11] or (5) determined by the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

CV credit amount

A new clean vehicle is eligible for a maximum credit of up to $7,500 if certain requirements are met. One $3,750 amount is allowed if a critical minerals requirement for the battery is met.[12] Another $3,750 amount is allowed if a battery components requirement is met.[13]

Critical minerals requirement

To satisfy the critical minerals requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of applicable critical minerals[14] that were (1) extracted or processed in the United States or a country that has a free trade agreement[15] with the United States or (2) recycled in North America equal to or greater than an applicable percentage.[16]

For this purpose the applicable percentage is 40 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 50 percent for a vehicle placed in service during calendar year 2024, 60 percent for 2025, 70 percent for 2026, and 80 percent after 2026.[17]

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[9] Foreign entity of concern as defined in 42 U.S.C. sec. 18741(a)(5).

[10] 10 U.S.C. sec. 4872(d). Covered nation means the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, and the Islamic Republic of Iran.

[11] 42 U.S.C. sec. 18741(a)(5)(D).

[12] Sec. 30D(b)(2).

[13] Sec. 30D(b)(3).

[14] Critical minerals as defined in sec. 45X(c)(6).

[15] Treasury has released proposed regulations on the clean vehicle credit which include interpreting free trade agreement. See Notice of Proposed Rulemaking, 88 Fed. Reg. 23370, April 17, 2023.

[16] Sec. 30D(e)(1)(A).

[17] Sec. 30D(e)(1)(B).

Battery components requirement

To satisfy the battery components requirement, a new clean vehicle's battery (from which the electric motor draws electricity) must have a percentage of the value of components that were manufactured or assembled in North America equal to or greater than an applicable percentage.[18]

For this purpose the applicable percentage is 50 percent for a vehicle placed in service before January 1, 2024. The applicable percentage is 60 percent for a vehicle placed in service during calendar year 2024 or 2025, 70 percent for 2026, 80 percent for 2027, 90 percent for 2028, and 100 percent after 2028.[19]

Vehicle price and AGI limitations

The provision requires that the manufacturer's suggested retail price ("MSRP") of a new clean vehicle purchased by the taxpayer not exceed certain limitations. That is, the credit amount is $0 if the MSRP for the vehicle exceeds the applicable limitation. This limitation is $80,000 in the case of a van, sport utility vehicle, or pickup truck, and $55,000 in the case of any other vehicle. The Secretary is directed to release regulations or guidance to characterize vehicles into the appropriate category by applying rules similar to those employed by the Environmental Protection Agency ("EPA") and the Department of Energy to determine vehicle class and size.[20]

Additionally, no credit is allowed if the taxpayer's income exceeds $300,000 in the case of a joint return or surviving spouse, $225,000 in the case of a head of household, or $150,000 in the case of any other taxpayer.[21] For purposes of this limitation, the taxpayer's income is the lesser of modified AGI of the current taxable year or modified AGI of the preceding taxable year.[22]

Transfer of credit

A taxpayer who has purchased or leased a vehicle may elect to transfer the credit to an eligible entity, subject to regulations or guidance the Secretary deems necessary.[23] The eligible

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[18] Sec. 30D(e)(2)(A). This requirement is intended to incentivize the manufacturing or assembly of high-value battery components, such as battery cells, in North America.

[19] Sec. 30D(e)(2)(B).

[20] Sec. 30D(f)(11). Treasury has released proposed regulations on the clean vehicle credit which include the determination of vehicle classifications. See Notice of Proposed Rulemaking, 88 Fed. Reg. 23370, April 17, 2023.

[21] Sec. 30D(f)(10).

[22] Modified AGI is AGI increased by any amount excluded from gross income under section 911, 931, or 933. Sec. 30D(f)(10)(C).

[23] Treasury has released proposed regulations on the transfer of clean vehicle credits. See Notice of Proposed Rulemaking, 88 Fed. Reg. 70310, October 10, 2023.

entity is then treated as the taxpayer with respect to the credit.[24] The Secretary is directed to establish a program to provide advance payments of these credit amounts to eligible entities.[25] An election to transfer the credit must be made on or before the date of vehicle purchase.[26]

An eligible entity is a dealer[27] which meets the following requirements: First, the dealer must be registered with the Secretary. Second, prior to the election of transfer, the dealer must disclose information to the buyer on the MSRP price of the vehicle, value of the credit or other incentives available, and the amount provided by the dealer as a condition of an election to transfer. Third, the dealer must pay the taxpayer for the amount of the credit allowable. Finally, the dealer must ensure that the availability or use of any other available manufacturer or dealer incentive does not limit the ability of the taxpayer to make an election and that the election will not limit the value or use of any such incentive.[28] The Secretary may revoke the registration of dealers that fail to comply with these requirements.[29]

The payment made by dealers to buyers in connection with a credit transfer election is not includable in the gross income of the taxpayer and is not deductible to the dealer.[30]

The tax liability of a taxpayer that does not meet the AGI requirements for the credit, that elects to transfer a credit, and that receives a payment in connection with such credit transfer, is increased by the amount of such payment.[31]

Other rules

A vehicle that is predominantly used outside the United States does not qualify for the credit.[32] A vehicle must meet certain emissions and safety standards in order to qualify for the credit.[33]

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[24] Sec. 30D(g)(1).

[25] Sec. 30D(g)(7).

[26] Sec. 30D(g)(3).

[27] A dealer is a person licensed by a State, territory of the United States, Indian tribal government, or Alaska Native Corporation to engage in the sale of vehicles. Sec. 30D(g)(8).

[28] Sec 30D(g)(2).

[29] Sec. 30D(g)(4).

[30] Sec. 30D(g)(5).

[31] Sec. 30D(g)(10).

[32] Sec. 30D(f)(4).

[33] Sec. 30D(f)(7).

The basis of any qualified vehicle is reduced by the amount of the credit.[34] The portion of the credit attributable to vehicles of a character subject to an allowance for depreciation is treated as part of the general business credit; the nonbusiness portion of the credit is allowable to the extent of the excess of the regular tax and the alternative minimum tax (reduced by certain other credits) for the taxable year.[35]

Only one credit is allowed for each vehicle and a taxpayer must include the vehicle identification number of the vehicle on a tax return to claim the credit.[36]

Expiration

No credit is allowed for any vehicle placed in service after December 31, 2032.[37]

Description of Proposal

The proposal provides a definition of free trade agreement for purposes of the critical mineral requirement of the CV credit. Under the proposal a free trade agreement is an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade between the United States and one or more other countries.

Effective Date

The proposal is effective for vehicles placed in service after date of enactment.

[34] Sec. 30D(f)(1).

[35] Sec. 30D(c).

[36] Sec. 30D(f)(8) and (9).

[37] Sec. 30D(h).

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to have the following effect on Federal fiscal year budget receipts:

Fiscal Years [Millions of Dollars]												
2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2024-29	2024-34
43	58	8	---	---	---	---	---	---	---	---	109	109